PUBLIC HEALTH REGULATIONS

Department of Health, State of Hawaii

Chapter 37

WATER POLLUTION CONTROL

Under and by virtue of the provisions of Sections 46-13 and 46-16, Revised Laws of Hawaii 1955, and all other applicable laws, Chapter 37 of the Public Health Regulations, Department of Health, State of Hawaii, relating to Water Pollution Control, is hereby amended to read as follows:

Section 1. DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Chapter:

- (a) "Water pollution" means
 - (1) Such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the State, including change in temperature, taste, color, turbidity, or odor of the waters, or
 - (2) Such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the State.
 - as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental or injurious to public health, safety or welfare, including harm, detriment or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, research and scientific uses of such waters.
- (b) "Wastes" means waste materials of any kind, whether treated or not, and whether animal, mineral or vegetable, and whether liquid, gaseous, radioactive or solid, including sewage and agricultural and industrial wastes, which cause any waters of the State to be reduced in quality below the standards applicable to the area as set out in Chapter 37-A of the Public Health Regulations. Department of Health, State of Hawaii.
- (c) "Treatment works" means the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers, or outlets, pumping, power and other equipment and their appurtenances.
- (d) "Waters of the State" means all
 - (1) rivers, streams, canals,
 - (2) ponds, lakes, reservoirs,
 - (3) bays, harbors, channels,
 - (4) lagoons, and
 - (5) coastal and shore waters,

- whether natural or artificial, which are situated within or bordering upon the State.
- (e) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company, foundation or other institution or entity, or governmental agency.
- (f) "Director" means the Director of Health or his duly authorized agent.
- (g) "Master" means any person or persons appointed by the Director of Health to conduct investigations, to hold hearings, to report or make recommendations to the Director on matters of water pollution, the disposal of wastes and standards of water quality.

Section 2. STANDARDS OF WATER QUALITY

The Director may appoint a Master who shall divide the waters of the State into areas and who, after investigations and hearings conducted in accordance with the Rules of Practice and Procedure of the Department of Health, State of Hawaii, shall recommend standards of water quality applicable to such water areas. The standards of quality recommended by the Master shall be such as to protect the present and prospective best use of each water area. Consideration shall be given by the Master to the standards and requirements of other government agencies having legal responsibilities for water quality control.

- * It is the public policy of this State to conserve the waters of the State, and to protect, maintain and improve the quality thereof for drinking water supply and food processing, for the growth and propagation of shellfish, fish and other marine and aquatic life, for oceanographic research, for the conservation of coral reefs and wilderness areas, and for domestic, agricultural, industrial, recreational and other legitimate uses; and to provide that no waste be discharged into any waters of this State without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; and to provide for the prevention, abatement and control of new and existing water pollution; and to cooperate with the federal government in carrying out these objectives.
- * Therefore, waters whose qualities are higher than established water quality standards shall not be lowered in quality unless it has been affirmatively demonstrated to the Director that such change is justifiable as a result of necessary economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, such waters. Any industrial, public or private project or development which could constitute a new source of pollution or an increased source of pollution will be required, as part of the initial project design to provide the highest and best degree of waste treatment practicable under existing technology. In implementing the policy of this paragraph as it relates to waters under federal jurisdiction, the Secretary of the Interior will be kept advised and provided with such information as he will need from time to time to protect the interests of the United States and the authority of the Secretary in maintaining high quality of interstate waters.

Standards of water quality, or any modification thereof, shall become effective upon their adoption by the Director in accordance with the requirements of the Hawaii Administrative Procedure Act. Such standards shall remain in effect until amended or repealed by the Director.

Section 3. PERMITS REQUIRED

It shall be unlawful for any person to do any one of the following without a permit issued in accordance with the provisions of this Chapter:

- (a) To discharge any wastes into any waters of the State so as to reduce the quality of the water below the standards of water quality adopted for such waters by Chapter 37-A;
- (b) To construct, install, modify, alter, or operate any treatment works or part thereof or any extension or addition thereto;
 - (c) To construct or use any new outlet for the discharge of any wastes into the waters of the State.

Section 4. APPLICATION FOR PERMIT

Every application for a permit shall be made on forms furnished by the Director and shall be accompanied by a statement of the proposed activity, or by a complete and detailed plan, description and history of the proposed or existing treatment works or outlet for the discharge of any wastes into the waters of the State and of any proposed additions, modifications or alterations thereto. An application for the renewal of a permit need contain only such information as is necessary to reflect changes in the permitted activity or in the treatment works or outlet which have occurred since the original filing.

All persons responsible for existing treatment works or outlets which discharge wastes into any water areas for which standards of water quality have been adopted by the Director shall file, within sixty days after the date on which a notice of adoption of the standards of water quality for such area has been published, an application for a permit to continue to discharge such wastes.

Section 5. ISSUANCE OF PERMIT

Application for permits will be reviewed together with plans, descriptions and histories submitted by the person making such application and together with such additional information as may be requested by the Director to ascertain the effect or probable effect upon the standards of water quality established for the water area involved. No permit shall be issued by the Director unless the application and the supporting information clearly show that the issuance thereof is in the public interest and unless the application contains a schedule of implementing actions the applicant will follow in order to comply with such standards of water quality. No permit shall be denied unless the applicant has had an opportunity for a hearing by the Director.

The Director may issue a permit for any period not exceeding five years, or may renew a permit for any additional period not exceeding five years. Upon expiration of the period stated therein, the permit shall automatically terminate and no rights shall become vested in the permittee.

Each permit shall set forth the conditions under which it is issued and shall require the permittee to conform to a schedule of implementing actions designed to obtain compliance with the standards of water quality established for the water area involved. The conditions shall include, but shall not be limited to, a requirement that the permittee shall do effluent sampling and shall report the results of such sampling to the Director. Any permittee may apply for a change in the conditions of the permit. A statement of the reasons for requesting such change shall accompany the application.

Section 6. REVOCATION OF PERMIT

Each permit shall be subject to revocation, to modification or change by the Director if he shall determine that such action is in the public interest. In taking such action the Director shall consider operation records, investigations or other information regarding the treatment works, outlets or quality of the receiving waters. Such action shall be effected by giving written notice to the permittee.

The notice shall contain the reasons for the action.

No permit shall be revoked, modified, or changed unless the permittee has had an opportunity for a hearing by the Director.

Section 7. PENALTY

Any person who violates any provisions of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. *Each day of violation shall constitute a separate offense. The Department may institute legal proceedings in the name of the State to recover the penalty, which shall be a government realization.

Section 8. SEVERABILITY .

If any provision of this Chapter, or its application to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Chapter, shall not be affected thereby.

I, Walter B. Quisenberry, M.D., Director of Health, hereby certify that the foregoing regulations were adopted by the Department of Health on the 26th day of December, 1967.

WALTER B. QUISENBERRY, M.D. Director of Health

The foregoing regulations are hereby approved as to form this 9th day of January, 1968.

NOBUKI KAMIDA
Deputy Attorney General

BERT T. KOBAYASHI Attorney General

The foregoing regulations are hereby approved this 26th day of January, 1968.

JOHN A. BURNS Governor of Hawaii

^{*} Amended Sections as approved on November 28, 1970.

PUBLIC HEALTH REGULATIONS

Department of Health, State of Hawaii

Chapter 37-A

WATER QUALITY STANDARDS

Under and by virtue of the provisions of Sections 46-13 and 46-16, Revised Laws of Hawaii 1955, and all other applicable laws, Chapter 37-A of the Public Health Regulations, Department of Health, State of Hawaii, is hereby amended to read as follows:

Section 1. PURPOSE AND SCOPE

Pursuant to the authority granted by Section 46-16, Revised Laws of Hawaii 1955, the Director of Health of the State of Hawaii appointed a Master to divide the waters of the State into areas and to recommend to the Director standards of water quality for such water areas. Except as modified in this Chapter, the standards recommended by the Master are hereby adopted. The standards adopted, hereinafter set forth, shall be the standards of water quality for the purposes of Chapter 37, Public Health Regulations, Department of Health, State of Hawaii, and shall be enforced and administered as provided therein.

Section 2. DEFINITIONS

- A. "Near shore waters" means all coastal waters lying within a defined reef area, all waters of a depth less than ten fathoms, or waters up to a distance of 1000 feet off-shore if there is no defined reef area and if the depth is greater than ten fathoms.
- B. "Off-shore waters" means all coastal waters beyond the limits defined for "near shore waters."
- C. "Coastal waters" includes "near shore waters," "off-shore waters" and those brackish waters, fresh waters and salt waters that are subject to the ebb and flow of the tide.

Section 3. CLASSIFICATION OF WATER USES

A. Classification of Coastal Water Uses

Coastal waters are classified in accordance with the uses to be protected in each class as follows:

1. Class AA waters

The uses to be protected in this class of waters are oceanographic research, propagation of shellfish and marine life, conservation of coral reefs and wilderness areas and aesthetic enjoyment.

It is the objective of this class of waters that they remain in as nearly their natural, pristine state as possible with an absolute minimum of pollution from any source. To the extent possible, the wilderness character of such areas shall be protected. No zones of mixing will be permitted in these waters.

The classification of any water area as Class AA shall not preclude other uses of such waters compatible with these objectives and in conformance with the standards applicable to them.

2. Class A waters

The uses to be protected in this class of waters are recreational, including fishing, swimming, bathing and other water-contact sports and aesthetic enjoyment.

It is the objective for this class of waters that their use for recreational purposes and aesthetic enjoyment not be limited in any way. Such waters shall be kept clean of any trash, solid materials or oils and shall not act as receiving waters for any effluent which has not received the best practicable treatment or control compatible with the standards established for this class.

3. Class B waters

The uses to be protected in this class of waters are small boat harbors, commercial, shipping and industrial, bait fishing and aesthetic enjoyment.

It is the objective for this class of waters that discharges of any pollutant be controlled to the maximum degree possible and that sewage and industrial effluents receive the best practicable treatment or control compatible for the standards established for this class.

The Class B designation shall apply only to a limited area next to boat docking facilities in bays and harbors. The rest of the water area in such bay or harbor shall be Class A unless given some other specific designation in Section 5.

B. Classification of Fresh Water Uses

Fresh waters are classified in accordance with the uses to be pro-

1. Class 1 waters

The uses to be protected in this class of waters are drinking water

supply and food processing.

It is the objective of this class of waters that they remain as nearly the natural state as possible with an absolute minimum of pollution from any source.

2. Class 2 waters

The uses to be protected in this class of waters are bathing, swimming, recreation, growth and propagation of fish and other aquatic life

and agricultural and industrial water supply.

It is the objective for this class of waters that their use for recreational purposes, propagation of fish and other aquatic life and agricultural and industrial water supply not be limited in any way. Such waters shall be kept clean of trash, solid materials or oils and shall not act as receiving waters for any effluent which has not received the best practicable treatment compatible with the standards established for this class.

Section 4. ZONES OF MIXING

** Zones of mixing for the assimilation of municipal, agricultural and industrial discharges which have received the best practicable treatment or control are recognized as necessary.

It is the objective of this limited zone to provide for a current realistic means of control over such discharges and at the same time achieve the highest attainable level of water quality.

Section 5. CLASSIFICATION AND ESTABLISHMENT OF WATER AREAS

The following classification of water uses shall apply to the following areas.

A. Coastal Water Areas

1. Oahu

** (a) Class AA waters

Waimanalo Bay from Makapuu Point to the southerly boundary of Kaiona Beach Park and including the waters surrounding Manana and Kaohikaipu Islands.

Kaneohe Bay. Kahana Bay. Waialua Bay, from Puaena Point to Kaiaka Point.

The near shore waters along Kaena Point for a distance of 3½ miles towards Mokuleia and 3½ miles towards Makua.

That portion of West Loch, Pearl Harbor, lying north of a tangent drawn from Nichols Point to Loch Point.

Hanauma Bay.

** (b) Class A Waters

That portion of Waimanalo Bay not designated Class AA.

Kailua Bay, from Wailea Point to Mokapu Point.

The near shore waters between Mokapu Point and Pyramid Rock.

The near shore waters between Makalii Point and Laie Point. Laie Bay.

All coastal waters not included in any other class.

(c) Class B waters

Kaneohe Bay small boat harbor adjacent to Kaneohe Yacht Club.

Kaneohe Marine Corps Air Station small boat harbor and pier area.

Kewalo Basin.

Ala Wai Boat Harbor.

Pokai Bay small boat harbor.

Haleiwa small boat harbor.

Keehi Lagoon marina areas.

Heeia-Kea small boat harbor.

Campbell Estate Industrial Harbor.

Pearl Harbor — Middle Loch and East Loch and that portion

of West Loch not classed as AA waters.

Honolulu Harbor.

2. Kauai

(a) Class AA waters

The near shore waters between Hikinoe Valley and Puu Poa Point, including Wainiha Bay and Hanalei Bay.

(b) Class A waters

All coastal waters of the island of Niihau.

All coastal waters of the island of Kauai not included in any other class.

(c) Class B waters

Wailua River small boat harbor.

Kukuiula Bay.

Hanapepe Bay small boat harbor.. Kikiaola Harbor. Nawiliwili Bay. Port Allen, Hanapepe Bay.

3. Molokai

(a) Class AA waters

The near shore waters between the westerly boundary of Haleolono Harbor and Laau Point.

The near shore waters between Laau Point and Ilio Point and from Ilio Point to Lamaola Head.

- * The near shore waters from Cape Halawa to the easterly boundary of Kaunakakai Harbor, except the waters of and from Kalaeloa Harbor, westerly, to and including the near shore waters adjoining the Ahupuaa of Puaahala and Kalokoiki Fish Pond.
- (b) Class A waters

Halawa Bay.

The near shore waters from the westerly boundary of Kaunakakai Harbor to the easterly boundary of Haleolono Harbor.

All coastal waters not included in any other class.

(c) Class B waters

Kaunakakai Harbor. Haleolono Harbor.

* The waters of and from Kalaeloa Harbor, westerly, to and including the near shore waters adjoining the Ahupuaa of Puaahala and Kalokoiki Fish Pond.

** 4. Lanai

(a) Class AA waters

The near shore waters from the westerly boundary of Hulopoe Bay to Kaiolohia Bay.

The near shore waters from Kamaika Point to the easterly boundary of Manele Bay.

(b) Class A waters

All coastal waters not included in any other class.

(c) Class B waters

Manele Bay.

Kaumalapau Harbor.

5. Maui

(a) Class AA waters

The near shore waters between Nakalele Point and Waihee Point.

The near shore waters between Huelo Point and Nanualele Point.

(b) Class A waters

All coastal waters not included in any other class.

(c) Class B waters

Maalaea small boat harbor. Lahaina small boat harbor. Kahului Bay.

** 6. Hawaii

(a) Class AA waters

The near shore waters from Ka Lae to Waiulaula Point.

(b) Class A waters

The near shore waters from the northern boundary of Kawaihae Harbor to the southern boundary of Mahukona Harbor.

The near shore waters from Kauilii Point to the westerly boundary of Hilo Harbor.

The near shore waters from the easterly boundary of Hilo Harbor to Ka Lae, excepting Honuapo Bay.

All coastal waters not included in any other class.

(c) Class B waters

Honuapo Bay.
Kealakekua Bay.
Keauhou Bay.
Kailua Bay.
Honokahau Bay.
Mahukona Harbor.
Hilo Harbor.
Kawaihae Harbor.

B. Fresh Water Areas

1. Class 1 waters

All sources of fresh surface water on all islands whether publicly or privately owned, used for domestic, culinary or food processing purposes.

2. Class 2 waters

All fresh water streams and rivers on all islands not included in Class 1.

Section 6. WATER QUALITY STANDARDS

- A. Basic Standards Applicable to All Water Areas
- All waters shall be free of substances attributable to discharges or wastes as follows:

- 1. Materials that will settle to form objectionable deposits;
- 2. Floating debris, oil, scum and other matter;
- 3. Substances producing objectionable color, odor, taste or turbidity;
- 4. Materials, including radionuclides, in concentrations or combinations which are toxic or which produce undesirable physiological responses in human, fish and other animal life and plants; and
- 5. Substances and conditions or combinations thereof in concentrations which produce undesirable aquatic life.

All waters shall also be free from soil particles resulting from erosion on land involved in earthwork, such as the construction of public works, highway, subdivisions, recreational, commercial, or industrial developments, or the cultivation and management of agricultural lands.

This standard shall be deemed met if it can be shown that the land on which the erosion occurred or is occurring is being managed in accordance with soil conservation practices acceptable to the Director, and that a comprehensive conservation program is being actively pursued, or that the discharge has received the best practicable treatment or control.

B. Specific Standards Applicable to Particular Water Areas

1. Microbiological Requirements

The median coliform bacteria shall not exceed 70 per 100 ml, nor shall samples exceed 230 per 100 ml at any time.

The median coliform bacteria shall not exceed 1,000 per 100 ml, nor shall more than 10% of the samples exceed 2,400 per 100 ml. Fecal coliform content shall not exceed an arithmetic average of 200/100 ml during any 30-day period nor shall more than 10% of the samples exceed 400/100 ml in the same time period. For such portion of Class 1 waters from which water is withdrawn for distribution for drinking water supply or food processing following simple chlorination, the fecal coliform content shall not exceed an arithmetic average of 20/100 ml during any calendar month.

Fecal coliform content shall not exceed an arithmetic average of 400/100 ml during any 30-day period nor shall more than 10% of the samples exceed 1000/100 ml in the same time period.

2. pH — Units

Not more than 1/2 unit difference from natural

Applicable to: Class AA

Classes A, 1

Class B

Applicable to: Class AA conditions but not lower than 8.0 nor higher than 8.5 from other than natural causes. (Not lower than 7.0 for fresh tidal waters.)

Not more than ½ unit difference from natural conditions but not lower than 7.0 nor higher than 8.5 from other than natural causes.

Not less than 6.5 nor higher than 8.5.

3. Nutrient Materials

Total phosphorus, not greater than 0.020 mg/1. Total phosphorus, not greater than 0.025 mg/1. Total phosphorus, not greater than 0.030 mg/1. Total nitrogen, not greater than 0.10 mg/1. Total nitrogen, not greater than 0.15 mg/1. Total nitrogen, not greater than 0.20 mg/1.

- 4. Dissolved Oxygen (except from natural causes)
 Not less than 6.0 mg/l.
 Not less than 5.0 mg/l.
 Not less than 4.5 mg/l.
- 5. Total Dissolved Solids, Salinity and Currents
 No changes in channels, in basin geometry of the
 area, or in freshwater influx shall be made which
 would cause permanent changes in isohaline patterns of more than ±10% of naturally occurring
 variation or which would otherwise affect biological and sedimentological situation. Total dissolved solids shall not be below 28,000 mg/1
 from other than natural causes.

** 6. Temperature

Temperature of receiving waters shall not change more than 1.5°F from natural conditions.

7. Turbidity

Secchi disc or secchi disc equivalent as "extinction coefficient" determinations shall not be altered from natural conditions more than 5% for Class AA waters, 10% for Class A waters or 20% for Class B waters.

8. Radionuclides

The concentration of radioactivity in water shall not exceed 1/30th of the MPC, values given for continuous occupational exposure in National Bureau of Standards Handbook No. 69. No radio-

Classes A, B

Class 2
Applicable to:
Class AA
Class B
Class AA
Class A
Class B
Applicable to:
Class AA
Class AA
Class B

Applicable to: Class AA

Applicable to: Classes AA, A, B and 2 Applicable to: Classes AA, A, B

Applicable to: Classes AA, A, B, 1 and 2 nuclide or mixture of radionuclides shall be present at concentrations greater than those specified by the U. S. Public Health Service, Publication No. 956, as revised in 1962, as acceptable for drinking water.

The concentration of radioactive materials present in fresh, estuarine, and marine waters shall be less than those that would require restrictions on the use of organisms harvested from the area in order to meet the Radiation Protection Guides recommended by the Federal Radiation Council.

Classes AA, A, B and 2

These water quality criteria are based upon the best currently available data. It is possible that studies planned to be made in connection with the implementation program may prove them to be either inadequate or unattainable. For this reason, they will be subject to periodic review and, where necessary, to change. Any change will be made only after public hearing, held in compliance with the Hawaii Administrative Procedure Act and the Rules of Practice and Procedure of the Department of Health.

Section 7. ESTABLISHMENT OF ZONES OF MIXING

- ** Upon the application of any person requesting that a portion of the waters of the State be zoned for the assimilation of agricultural, municipal and industrial discharges, if the Director shall determine that such use will not violate the basic standards applicable to all waters, that such use will not unreasonably interfere with any actual or probable use of the water areas for which it is classified and that the discharges receive the best practicable treatment or control he shall then designate such portion as a zone of mixing.
- ** The boundaries of each zone of mixing shall be fixed by the Director, taking into account protected uses of the body of water, existing natural conditions of the receiving water (i.e., depth, currents, location, etc.), character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve a maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water. The character and the source of effluent permitted to be discharged into the zone of mixing shall be stated by the Director in the designation of the zone.

Each designation of a zone of mixing shall set forth the conditions under which it is issued. The conditions may include, but shall not be limited to, a requirement that the designee shall do effluent and receiving water sampling and

shall report the results of such sampling to the Director or that the designee shall undertake a program of research to develop practicable alternatives to the methods of treatment or control in use by the designee.

The application shall be made on forms furnished by the Director and shall contain the information required therein.

The establishment of a zone of mixing and the boundaries thereof shall be made only after hearing held by the Director on the island where the area is situated in accordance with the Hawaii Administrative Procedure Act and the Rules of Practice and Procedure of the Department of Health.

Section 8. TERMINATION OF ZONES OF MIXING

- ** The Director may designate a water area as a zone of mixing for any period not exceeding ten years. Upon expiration of the period stated in the desgination, the zone of mixing shall automatically terminate and no rights shall become vested in the designee. A water area may be redesignated as a zone of mixing for additional periods not exceeding ten years, upon application.
- ** The Director, on his own motion, or upon the application of any person, shall terminate the designation of the water area as a zone of mixing, if after a hearing, he shall determine that the water area does not meet the basic standards applicable to all water areas or that the use of the water area as a zone of mixing will unreasonably interfere with any actual or probable use of the water area or that the discharge into the zone of mixing does not receive the best practicable treatment or control. Such termination shall be made only after a hearing held by the Director on the island where the area is situated in accordance with the Hawaii Administrative Procedure Act and the Rules of Practice and Procedure of the Department of Health. Upon such termination, the standards of water quality applicable thereto shall be those established for the water as otherwise classified.

Section 9. EFFECTIVE DATE

This Chapter shall become effective thirty days after filing with the Lieutenant Governor.

Section 10. SEVERABILITY

If any provision of this Chapter, or its application to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Chapter, shall not be affected thereby.

I, Walter B. Quisenberry, M.D., Director of Health, hereby certify that the foregoing regulations were adopted by the Department of Health on the 26th day of December, 1967.

WALTER B. QUISENBERRY, M.D. Director of Health

The foregoing regulations are hereby approved as to form this 9th day of January, 1968.

NOBUKI KAMIDA Deputy Attorney General BERT T. KOBAYASHI
Attorney General

The foregoing regulations are hereby approved this 26th day of January, 1968.

JOHN A. BURNS Governor of Hawaii

* Amended Sections as approved on November 1, 1969.